

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STERLING SAVINGS BANK, a  
Washington chartered bank; and  
STERLING FINANCIAL CORPORATION,  
a Washington corporation,

Plaintiffs,

v.

HEIDI B. STANLEY, a married  
woman,

Defendant.

NO. CV-12-214-EFS

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT,  
ENTERING JUDGMENT IN  
DEFENDANT'S FAVOR, AND CLOSING  
FILE**

A hearing occurred in the above-captioned matter on August 22, 2012, in Spokane. Plaintiffs Sterling Savings Bank and Sterling Financial Corp. (collectively, "Sterling") were represented by Gregory Hollon. Nicholas Kovarik and Bob Dunn appeared for Defendant Heidi B. Stanley, who was present. Before the Court was Mrs. Stanley's Motion for Summary Judgment, which asks the Court to find that the following "TARP laws" do not preclude Sterling from either voluntarily or involuntarily paying discrimination damages to Mrs. Stanley under RCW 49.60 et seq.: the Troubled Asset Relief Program; the Emergency Economic Stabilization Act of 2008; the American Recovery and Reinvestment Act of 2009; 31 C.F.R. part 30; and 12 C.F.R. part 359. ECF No. [22](#). After reviewing the

1 submitted material and relevant authority and hearing from counsel, the  
2 Court is fully informed. This Order supplements and memorializes the  
3 Court's oral ruling granting Mrs. Stanley's motion.

4 **A. Background<sup>1</sup>**

5 In 1985, Mrs. Stanley began her career at Sterling. After twenty-  
6 three years with Sterling, she was selected as Sterling's Chief Executive  
7 Officer (CEO). She and Sterling executed an employment contract, which  
8 contained a severance-pay provision. Months after the execution of the  
9 employment contract, Sterling requested that Mrs. Stanley amend the  
10 employment contract to revoke the severance-pay provision because  
11 Sterling wished to receive "bailout" funds from Congress and the TARP  
12 laws prohibited Sterling from paying a golden parachute payment,  
13 including severance pay, to a senior executive officer. Mrs. Stanley  
14 signed the amendment.

15 In May 2009, Mrs. Stanley was diagnosed with breast cancer. She  
16 continued working while receiving treatment. In October 2009, Sterling  
17 fired Mrs. Stanley. Mrs. Stanley claims her termination was wrongfully

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19 <sup>1</sup> When considering this motion and creating this factual section,  
20 the Court 1) believed the undisputed facts and the non-moving party's  
21 evidence, 2) drew all justifiable inferences therefrom in the non-moving  
22 party's favor, 3) did not weigh the evidence or assess credibility, and  
23 4) did not accept assertions made by the non-moving party that were  
24 flatly contradicted by the record. See *Anderson v. Liberty Lobby, Inc.*,  
25 477 U.S. 242, 255 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007).  
26

1 based on her gender and medical condition; Sterling contends it fired  
2 Mrs. Stanley because it was unable to raise the necessary operating  
3 capital absent new management.

4 On April 20, 2012, Mrs. Stanley and her husband filed a complaint  
5 in state court alleging discrimination under RCW 49.60 *et seq.* and loss  
6 of consortium. On May 18, 2012, Sterling removed the lawsuit to federal  
7 court. E.D. Wash. CV-12-357-EFS, ECF No. [1](#). On July 19, 2012, the Court  
8 granted the Stanleys' motion to remand the discrimination lawsuit to  
9 state court. E.D. Wash. CV-12-357-EFS, ECF No. [16](#).

10 Sterling filed the instant federal lawsuit on April 19, 2012, asking  
11 the Court to declare that any severance or related benefit conferred to  
12 Mrs. Stanley would constitute a prohibited golden parachute payment under  
13 the TARP laws. ECF No. [1](#). In its response to Mrs. Stanley's June 28,  
14 2012-filed summary judgment motion, ECF No. [22](#), Sterling argues that the  
15 TARP laws' golden-parachute-payment extends to a discrimination damages  
16 award.

17 **B. Standard**

18 Summary judgment is appropriate if the record establishes "no  
19 genuine dispute as to any material fact and the movant is entitled to  
20 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party opposing  
21 summary judgment must point to specific facts establishing a genuine  
22 issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S.  
23 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475  
24 U.S. 574, 586-87 (1986).

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1 **C. Authority and Analysis**

2 There is no dispute that Mrs. Stanley was a senior executive officer  
3 at Sterling, which was a troubled financial institution that obtained  
4 "bailout" funds and therefore is restricted by the TARP laws from making  
5 a golden parachute payment to her. What is disputed is whether the  
6 discrimination damages that Mrs. Stanley seeks from Sterling in the  
7 state-court lawsuit are encompassed in the TARP laws golden-parachute-  
8 payment prohibition.

9 Congress's, and the agencies', aim when enacting the TARP laws and  
10 regulations was to stabilize the financial markets. This stabilization  
11 plan included restricting a troubled financial institution's ability to  
12 pay its top five senior executive officers golden parachute payments.  
13 12 U.S.C. § 5221(b)(3)(C); 12 C.F.R. § 359.0(b); 31 C.F.R. § 30.9.

14 Congress defines a golden parachute payment as "any payment to a  
15 senior executive officer for departure from a company for any reason,  
16 except for payments for services performed or benefits accrued." 12  
17 U.S.C. § 5221(a)(2). The related regulations enacted by the U.S.  
18 Department of Treasury<sup>2</sup> and Federal Deposit Insurance Corporation also  
19 define golden parachute payment. Although each definition uses slightly  
20 different language, they each focus on the following requirements:

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23 <sup>2</sup> Congress tasked the Secretary of the Treasury with establishing  
24 executive compensation standards to which TARP recipients must abide.  
25 12 C.F.R. § 5221(b)(2). The U.S. Treasury did so through 31 C.F.R. pt.  
26 30 *et seq.* See also 12 C.F.R. § 359.1

- 1        1)    any payment to a senior executive officer by the troubled
- 2            financial institution;
- 3        2)    the payment is for the senior executive officer's departure
- 4            from the troubled financial institution; and
- 5        3)    the payment is not for services performed or benefits accrued.

6    See 12 U.S.C. § 5221(a)(1-3); 12 C.F.R. § 359.0(b) (identifying that a  
7    golden parachute payment is "generally considered" to include the above  
8    requirements); 12 C.F.R. § 359.1(f) (defining a golden parachute payment  
9    as any payment that is "contingent on" the termination of employment);  
10   31 C.F.R. § 30.1 (identifying a golden parachute payment as "any payment  
11   for the departure from a TARP recipient for any reason . . . except for  
12   services performed or benefits accrued").

13        Sterling focuses on the "any payment" language contained in  
14   § 5221(a)(2) and the applicable regulations to argue that the TARP laws  
15   prohibit the payment of a discrimination-damages award to a senior  
16   executive officer. However, Sterling reads the "any payment" language  
17   in a vacuum and without reference to the other requirement that the  
18   payment be for the departure of the senior executive officer. The  
19   regulations amplify this "departure" requirement by explaining that the  
20   payment must be "contingent on" the employee's departure from the  
21   financial institution, 12 C.F.R. § 359(b)(0), or "made for [the  
22   employee's] departure," 31 C.F.R. § 30.9, or "for the departure from a  
23   TARP recipient," 31 C.F.R. § 30.1.

24        An employee who is fired as a result of her employer's  
25   discriminatory conduct is not "departing" from the employer as that term  
26   is envisioned by the TARP laws. This is because, but for the wrongful

1 termination, the employee would not have departed. Therefore, any  
2 damages awarded to this wrongfully-terminated employee is not payment  
3 "made for the departure" or "contingent on" the employee's departure, but  
4 rather is to compensate the wrongfully-terminated employee for being  
5 unable to continue receiving wages. Similarly, emotional distress  
6 damages are not "made for the departure" or "contingent on the departure"  
7 but rather are contingent on the fact-finder finding that the employer's  
8 wrongful termination caused the employee emotional distress.

9 Further, an award of lost wages in a employment-discrimination  
10 lawsuit is essentially a payment for services performed. Therefore, the  
11 Court's interpretation of the TARP laws is supported by § 5221(a)(2)'s  
12 exclusion for "payments for services performed or benefits accrued"; and  
13 the applicable regulations contain similar exceptions. 12 C.F.R.  
14 § 359.0(b) (excluding payments pursuant to qualified retirement plans,  
15 nonqualified bona fide deferred compensation plans, nondiscriminatory  
16 severance pay plans, and other types of common benefit plans, state  
17 statutes and death benefits); 31 C.F.R. § 30.1(2)(ii) (excluding "[a]ny  
18 payment made by reason of the employee due to the employee's death or  
19 disability").

20 Accordingly, the TARP laws' language supports a finding that  
21 Congress did not intend to alter the right of a wrongfully-terminated  
22 senior executive officer "to recover actual damages for discrimination."  
23 *Burchfiel v. Boeing Corp.*, 149 Wn. App. 468, 485 (2009). For these  
24 reasons, the Court finds Mrs. Stanley, if she succeeds on her state-court  
25 discrimination claim, may recover lost wages, future wages, and emotional  
26

1 distress damages.<sup>3</sup> The merit of Mrs. Stanley's discrimination claim is  
2 a matter for the state court.

3 **D. Conclusion**

4 For the reasons stated on the record and supplemented herein, **IT IS**  
5 **HEREBY ORDERED:**

6 1. Defendant's Motion for Summary Judgment, **ECF No. 22**, is  
7 **GRANTED.**

8 2. Judgment is to be entered in Defendant's favor.

9 3. All pending dates and deadlines are **STRICKEN.**

10 4. This file shall be **CLOSED.**

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
12 Order and provide copies to counsel.

13 **DATED** this 23rd day of August 2012.

14  
15 s/Edward F. Shea

16 EDWARD F. SHEA

17 Senior United States District Judge

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24 <sup>3</sup> The Court understands that Mrs. Stanley's request for benefits  
25 does not include a request for severance, lost retirement, or lost  
26 benefits.